

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION**

NO: 4:08-CR-62-F-1

UNITED STATES OF AMERICA)

)

Plaintiff,)

)

v.)

ORDER

)

GARLAND ELLISON)

)

Defendant.)

Following a motion by defense counsel, on September 24, 2008, this Court ordered that the Defendant be evaluated by at least one qualified psychologist or psychiatrist to determine his competency to proceed with his arraignment and trial, pursuant to [18 U.S.C. §§ 4142](#) and 4242. [\[DE-10\]](#). “The test for determining competency is whether ‘[a defendant] has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding . . . and whether he has a rational as well as a factual understanding of the proceedings against him.’” [United States v. General, 278 F.3d 389, 395-96 \(4th Cir. 2002\)](#) (quoting [Dusky v. United States, 362 U.S. 402 , 402 \(1960\)](#)).

On March 19, 2009, this Court received a forensic report from Dr. Ron Nieberding, a clinical psychologist at the Metropolitan Correctional Center. The report detailed the results of the Court ordered evaluation and rendered the opinion that the Defendant currently suffers from mental disease, specifically: 1) Psychotic Disorder Not Otherwise Specified, in Partial Remission; 2) Personality Disorder Not Otherwise Specified, with Narcissistic, Paranoid, and Schizotypal traits; 3) Legal Difficulties, Interpersonal Isolation; 4) and a Global Assessment Functioning score of 60. [Forensic Eval., p. 10]

Dr. Neiberding further concluded that:

The issue of Mr. Ellison's competence to proceed to criminal adjudication is predicated on whether he suffers from a severe mental disease or defect, the result of which he is unable to understand legal proceedings, or to properly assist in his defense. At the present time, Mr. Ellison does appear to be experiencing symptoms consistent with the mental conditions described previously. Despite the presence of these factors, results of the current evaluation indicated the defendant appeared to maintain a fundamentally accurate factual and rational understanding of his current legal circumstances. The defendant is aware of the charges against him, and was able to accurately describe the roles and the responsibilities of the parties involved in his case.
. . . .

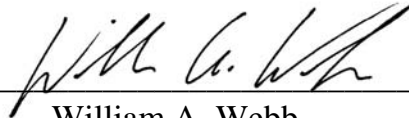
During the period of assessment, however, Mr. Ellison demonstrated the ability to cooperate and discuss issues with others in a relevant and coherent manner, suggesting this ability would likely generalize to other interpersonal situations.

In summary, based on the results of the current evaluation, Mr. Ellison appeared to possess a factual and rational understanding of this [sic] current legal circumstances. He also appeared to possess the capacity to assist counsel at the present time.

[Forensic Eval., pp. 9-10].

A competency hearing was held before the undersigned on May 5, 2009 at 10:00 a.m. At this hearing, the Defendant was present and represented by counsel. Both parties stipulated to the findings contained in the forensic report. Furthermore, the undersigned has reviewed the sixteen-page report in its entirety and has determined that the psychologist's conclusions are adequately supported by the evidence. Accordingly, the Court finds that the Defendant is competent to stand trial.

DONE AND ORDERED in Chambers at Raleigh, North Carolina this 5th day of May, 2009.

A handwritten signature in black ink, appearing to read "William A. Webb", is written over a horizontal line.

William A. Webb
U.S. Magistrate Judge